

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

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O.A.H.

2 In the Matter of the Escrow Agent License of:

No. 09-BD008-BNK

3 **ARIZONA TITLE AGENCY, INC.**
4 3131 E. Camelback Road, Suite 125
Phoenix, AZ 85016

**ORDER OF SUMMARY SUSPENSION
AND NOTICE OF HEARING TO REVOKE**


5 Respondent.

6
7 The Arizona Department of Financial Institutions (the "Department") hereby finds that
8 Arizona Title Agency, Inc. ("Respondent") has violated the provisions of the Arizona Revised
9 Statutes ("A.R.S."), Title 6 as set forth below and finds that the public health, safety and welfare
10 require emergency action pursuant to A.R.S. §§ 6-817 and 41-1092.11(B).

11 **THEREFORE, IT IS ORDERED** to summarily suspend the Arizona escrow agent license
12 held by Respondent, effective immediately, pending the proceedings for revocation or other action
13 commenced this date. **This suspension is effective immediately.**

14 EFFECTIVE this 12 day of August, 2008.

15 Felecia A. Rotellini
16 Superintendent of Financial Institutions

17 By 
18 Robert D. Charlton
Assistant Superintendent of Financial Institutions

19 **NOTICE OF HEARING AND COMPLAINT**

20 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138,
21 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative
22 Hearings, an independent agency, and is scheduled for October 8, 2008, at 9:00 a.m., at the Office of
23 Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the
24 "Hearing").

25 The purpose of the Hearing is: (1) to determine whether grounds exist to suspend or revoke
26 Respondent's escrow agent license; (2) to order any other remedy necessary or proper for the

1 enforcement of statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123
2 and 6-131; and (3) to impose a civil money penalty pursuant to A.R.S. § 6-132.

3 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
4 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
5 or expressed, to the Director of the Office of Administrative Hearings or the director's designee to
6 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
7 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
8 of Administrative Hearings has designated Thomas Shedden, at the address and phone number listed
9 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
10 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
11 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
12 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
13 Judge is specifically prohibited from entering.

14 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
15 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
16 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
17 Administrative Hearings.

18 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
19 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity
20 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses
21 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to
22 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),
23 any person may appear on his or her own behalf or by counsel.

24 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
25 made by a court reporter or by electronic means. Any party that requests a transcript of the
26 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

1 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
2 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

3 **NOTICE OF APPLICABLE RULES**

4 The hearing will be conducted pursuant to A.A.C. R20-4-1201 through R20-4-1220 and the
5 rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
6 R2-19-122. A copy of these rules is enclosed.

7 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**
8 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
9 position or defense and shall specifically admit or deny each of the assertions contained in this
10 Notice of Hearing. If the answering Respondent is without or are unable to reasonably obtain
11 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
12 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
13 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
14 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
15 Any defense not raised in the answer is deemed waived.

16 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
17 **deemed in default** and the Superintendent may deem the findings in this Notice of Hearing as true
18 and admitted and the Superintendent may take whatever action is appropriate, including (1)
19 suspension or revocation of Respondent's license; (2) any other remedy necessary or proper for the
20 enforcement of statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123
21 and 6-131; and (3) imposing a civil money penalty pursuant to A.R.S. § 6-132.

22 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
23 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
24 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
25 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
26 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for special accommodations must be made as early as possible to allow time to arrange the accommodations. If accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

FINDINGS

1. Respondent Arizona Title Agency, Inc. (“Arizona Title”) is an Arizona corporation, and a wholly-owned subsidiary of Mercury Companies, Inc. (“Mercury”), a Colorado corporation. Arizona Title is authorized to transact business in Arizona as an escrow agent, license number EA 0017300, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of Respondent’s business is that of engaging in or carrying on the escrow business or acting in the capacity of an escrow agent within the meaning of A.R.S. § 6-801(6).

2. Danny Sullivan was the President and CEO of Arizona Title.

3. On or about July 29, 2008, all business operations of Arizona Title were shut down, and its employees laid off, when Mercury, its parent company, announced the closing of all of its title companies in Arizona, Texas, and California, due to economic difficulties.

4. As a result of the shut down, approximately fifty six (56) Arizona Title employees at seven (7) Arizona locations failed to receive their payroll checks for the period from July 16, 2008 to July 31, 2008. At least one employee was notified by their bank that their paycheck for the period July 1, 2008 to July 15, 2008 was returned due to insufficient funds.

5. On or about July 4, 2008, Arizona Title made a payment by check to a lessor for July 2008 rent owed by Arizona Title for its lease of commercial space located in Casa Grande, Arizona. The term of the five year lease commenced September 2006 and expires at end of August 2011. The check, deposited by the lessor on or about July 20, 2008, was dishonored and returned due to insufficient funds.

6. Arizona Title has failed to pay all debts as they fall due in the regular course of business, and has demonstrated that it is in such financial condition that it cannot continue in

1 business with safety to Arizona Title's customers or the public, which are grounds for license
2 suspension or revocation.

3 7. Pursuant to A.R.S. § 6-832, Arizona Title's audited financial statements for the year
4 ended December 31, 2007, were due to be filed with the Superintendent by April 30, 2008.

5 8. Arizona Title failed to file with the Superintendent its audited financial statements
6 for the year ended December 31, 2007, as statutorily required, which constitutes grounds for
7 assessment of a fee of twenty five dollars (\$25.00) for each day Respondent's audited financial
8 statements were not received by the Department.

9 9. On July 30, 2008, the Department sent a letter to Arizona Title requesting that it
10 provide to the Department the following:

- 11 1. A certified copy of the resolution of the escrow agent's board of
12 directors or a verified statement indicating its intent to surrender
the escrow agent license.
- 13 2. A copy of the final reconciliation for all escrow bank accounts
14 including copies of the reconciliation form, bank statement,
outstanding checks list, deposit in transit list, trial balance of
15 escrows and any adjusting entries.
- 16 3. A list of the escrow bank accounts transferred to buyer with copies
of the checks, evidencing the transfer of the escrow funds to buyer.
- 17 4. A list of the open and closed escrow account files transferred to
18 buyer.
- 19 5. A statement indicating that no escrow business has been accepted
since the effective closing date.
- 20 6. A copy of the sales agreement between agent and buyer for the sale
of the escrow business.
- 21 7. A copy of the letter, advising them of the transfer of escrow
22 accounts to the new buyer, sent to the parties of the open escrows.
- 23 8. The original escrow agent license.
- 24 9. A report of the arrangements made for storage of the closed escrow
25 files. This information should include a list of all the files placed
in storage, the location of the files and the name of the person to
26 contact for retrieval.

1 10. If applicable, final payment to the Arizona Escrow Recovery fund
2 for the last quarter.

3 10. On August 4, 2008, the Department sent an additional letter to Arizona Title,
4 requesting that it provide to the Department the following:

5 1. Where are the closed escrow files located-at branches and/or
6 warehouse?

7 2. Who will be taking responsibility for these files?

8 3. How soon will this take place?

9 4. Status of each branch and/or warehouse lease payments? Are any
of the files in jeopardy of being taken by the landlord because of
non-payment of the lease obligation?

10 11. To date, Arizona Title has failed to provide to the Department all records,
11 documents, information and reports as required by the Department's letters of July 30, 2008 and
12 August 4, 2008, thereby making it impossible for the Department to protect the public.

13 12. The conduct described above constitutes an immediate threat to the public health,
14 safety, and welfare, warranting immediate suspension of Respondent's escrow agent license because
15 Respondent is licensed in Arizona as an escrow agent while it is unable to pay debts as they fall due
16 in the regular course of business, is in such financial condition that it cannot continue to do business
17 with safety to its customers or the public, is failing to conduct business in accordance with the law,
18 and has violated Title 6, Chapter 7 and the rules relating thereto.

19 13. The conduct described above constitutes grounds for revocation of Respondent's
20 escrow agent license.

21 **LAW**

22 1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty
23 to regulate all persons engaged in the escrow agent business and with the enforcement of statutes,
24 rules, and regulations relating to escrow agents.

25 2. By the conduct set forth above in the Complaint, Arizona Title has violated the
26 following statutes and rules governing escrow agents:

1 a. A.R.S. §§ 6-832(A) and (B) by failing to file its audited financial statements for
2 the year ended December 31, 2007 with the Superintendent on April 30, 2008, as
3 required; and

4 b. A.R.S. §§ 6-123(3) and 6-837(B) by failing to provide to the Department all
5 information requested by the Department's letters of July 30, 2008 and
6 August 4, 2008.

7 3. Respondent has failed to pay all debts as they fall due in the regular course of
8 business, and has demonstrated that it is in such financial condition that it cannot continue in
9 business with safety to Arizona Title's customers or the public, which are grounds for the
10 suspension or revocation of Respondent's escrow agent license, pursuant to A.R.S. §§ 6-817(A)(1)
11 and (A)(3).

12 4. Respondent has failed to furnish information as required by the Superintendent under
13 A.R.S. Title 6, Chapter 7 and the rules related to Chapter 7, which is a ground for the suspension or
14 revocation of Respondent's escrow agent license, pursuant to A.R.S. § 6-817(8).

15 5. Respondent does not have the financial resources to adequately serve the public
16 under A.R.S. Title 6, Chapter 7 and the rules related to Chapter 7, which is a ground for the
17 suspension or revocation of Respondent's escrow agent license, pursuant to A.R.S. § 6-817(10).

18 6. Respondent has failed to conduct business in accordance with law or has violated
19 A.R.S. Title 6, Chapter 7 and the rules related to Chapter 7, which are grounds for the suspension or
20 revocation of Respondent's escrow agent license, pursuant to A.R.S. § 6-817(A)(2).

21 7. The violations, set forth above, constitute grounds for the pursuit of any other
22 remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents in
23 Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

24 8. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes
25 are grounds for the assessment of a civil penalty of not more than five thousand dollars (\$5,000.00)
26 for each violation for each day.

1 9. Pursuant to A.R.S. § 6-816(B), Respondent's violation of A.R.S. §§ 6-832(A) and
2 (B) are grounds for the assessment of a late fee of two thousand two hundred fifty dollars
3 (\$2,250.00), constituting a fee of twenty five dollars (\$25.00) for each day Respondent's audited
4 financial statements for the year ended December 31, 2007 are not filed, which totals ninety (90)
5 days past the April 30, 2008 deadline.

6 10. Pursuant to A.R.S. § 6-125(B)(4), Respondent shall be assessed an examination fee
7 at a rate set by the Superintendent, not to exceed sixty five dollars (\$65.00) per hour for each
8 examiner employed at the examination of Arizona Title, conducted pursuant to A.R.S.
9 § 6-122(B)(3).

10 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
11 above described violations or other grounds for disciplinary action, the Superintendent may: (1)
12 suspend or revoke Arizona Title's escrow agent license pursuant to A.R.S. § 6-817; (2) order any
13 other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents
14 in Arizona under A.R.S. §§ 6-123 and 6-131; and (3) impose a civil penalty pursuant to A.R.S.
15 § 6-132.

16 DATED this 12 day of August, 2008.

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions

19 By Robert D. Charlton
20 Robert D. Charlton
 Assistant Superintendent of Financial Institutions

21 ORIGINAL of the foregoing filed this 12th
22 day of August, 2008, in the office of:

23 Felecia A. Rotellini
24 Superintendent of Financial Institutions
25 Arizona Department of Financial Institutions
26 ATTN: Susan Longo
 2910 N. 44th Street, Suite 310
 Phoenix, AZ 85018

1 COPY mailed/delivered same date to:

2 Thomas Shedden, Administrative Law Judge
3 Office of the Administrative Hearings
4 1400 West Washington, Suite 101
5 Phoenix, AZ 85007

6 Craig A. Raby, Assistant Attorney General
7 Attorney General's Office
8 1275 West Washington
9 Phoenix, AZ 85007

10 Robert D. Charlton, Assistant Superintendent
11 Richard Fergus, Licensing Manager
12 Thomas C. Fink, Senior Examiner
13 Arizona Department of Financial Institutions
14 2910 N. 44th Street, Suite 310
15 Phoenix, AZ 85018

16 AND COPY MAILED SAME DATE, by
17 Certified Mail, Return Receipt Requested to:

18 Arizona Title Agency, Inc.
19 c/o Danny Sullivan, President and CEO
20 3131 E. Camelback Road, Suite 125
21 Phoenix, AZ 85016

22 CT Corporation System
23 Statutory Agent for Arizona Title Agency, Inc.
24 2394 E. Camelback Road
25 Phoenix, AZ 85016

26 Jerrold G. Hauptman, Owner
Mercury Companies, Inc.
1515 Arapaho Street
Tower 1, Suite 1400
Denver, CO 80202

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28 265578, PHX-AGN-2008-0517